

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

**Date: 17 August 2009**

**Public Authority:** Northampton General Hospital NHS Trust  
**Address:** Cliftonville,  
Northampton,  
NN1 5BD

### Summary

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The complainant asked Northampton General Hospital NHS Trust for copies of all job evaluations which took place during a period of 8 months and 3 days. The Commissioner found that Northampton General Hospital NHS Trust acted correctly in refusing the request under section 12 of the Act as the appropriate limit would have been exceeded, but that the public authority had failed to provide advice and assistance in accordance with section 16(1) of the Act.

### The Commissioner's Role

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1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

### The Request

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2. On 4 July 2008 the complainant requested:

*"Copies of all jobs that went through the evaluation of job matching panels from 01/10/07 to date. That includes any jobs which have changed or new positions which have been created. I would like a breakdown of the score sheet and the number of management/staff side that sat on the individual panels"*

3. In a refusal notice dated 1 August 2008, within the 20 day time for compliance, Northampton General Hospital NHS Trust stated that:

*"To respond to your request would involve a substantial amount of work in order to extract this information from 1 October 2007 to date and will exceed more than 18 hours"*

Northampton General Hospital NHS Trust cited the exemption under section 12 of the Act.

4. In an email dated 23 September 2008 the complainant requested an internal review of Northampton General Hospital NHS Trust's decision to refuse her request under section 12.
5. On 21 October 2008 Northampton General Hospital NHS Trust provided the complainant with the outcome of its internal review. Northampton General Hospital NHS Trust upheld its original decision not to provide the information to the complainant, stating that to answer the request had been estimated to take 6 days work and cost a total of £1125 (£675 over the appropriate limit). It advised the complainant that in reaching this estimate it had aggregated the costs of responding to this request (request one) with the costs of responding to another request (request two), also received on 4 July 2008.

## The Investigation

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### Scope of the case

6. On 3 December 2008 the complainant contacted the Commissioner to complain about the way her request for information had been handled. The complainant specifically asked the Commissioner to consider Northampton General Hospital NHS Trust's application of section 12.

### Chronology

7. On 18 March 2009 the Commissioner contacted Northampton General Hospital NHS Trust and asked it to provide further clarification of the costs involved in locating, retrieving and extracting the information requested by the complainant.
8. In a letter dated 15 April 2009 Northampton General Hospital NHS Trust responded to the Commissioner's letter. It stated that, in order to collate the information requested, it would have to manually check in excess of 4000 files. This was because the job evaluations for the time period covered by this requested and carried out before September 2008 were not held on a central database, they were held in individual staff files which were held by their departmental manager. Therefore the files of all staff members would have to be checked manually to find all of the information requested within the timeframe required by the request, this would have to be done before the information could be copied, redacted and provided to the complainant. In this letter the public authority stated that the time taken to collate a response and provide the evidence requested by the Commissioner was in fact 5 working days and therefore proof that to have responded to this request in full would have taken in excess of 18 hours.
9. On 30 April 2009 the Commissioner contacted Northampton General Hospital NHS Trust requesting clarification of the aggregation of this request with request two.

10. Northampton General Hospital NHS Trust responded on 6 April 2009. In their response they stated that the complainant had submitted the second request on the same day as this one (4 July 2008). The public authority responded to that request but stated that in doing so they spent a total of 10 hours 15 minutes. It provided the Commissioner with a breakdown of costs incurred in responding to request two which was for all job descriptions for service manager jobs on Band 5
11. On 14 July 2009 and 30 July 2009 the Commissioner asked the public authority to further explain the job evaluation records. He asked whether there was one evaluation per post or one evaluation per member of staff. He also queried an apparent contradiction in the public authority's comments about the existence of a central database for job evaluations.

## Analysis

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### Exemption - section 12

12. Section 12(1) of the Act states:

*'Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.'*
13. Accordingly, section 12 provides that a public authority is not obliged to comply with a request for information if it estimates that meeting the request would exceed the appropriate cost limit. The appropriate limit is currently set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 ('the Regulations'), the wording of which is provided in the legal annex to this Notice. A public authority may only take into account the cost of determining whether it holds the information requested, locating, retrieving and extracting the requested information in performing its calculation. The cost limit is currently set at £450 for all public authorities (other than central government) and equates to 2½ days' work (18 hours) at a rate of £25 per hour.
14. The Regulations also allow for the aggregation of the costs of complying with two or more related requests where these relate to the same or similar information and are received by the public authority within any period of sixty consecutive working days.
15. The Commissioner accepts that the two requests were sufficiently similar to allow aggregation and were received within a sixty day period. As such he is clear that the public authority would have been entitled to aggregate the costs of complying with the two requests and, if they had exceeded the appropriate limit, to refuse to answer both requests by virtue of section 12(1) of the Act. It would then have been appropriate under section 16 of the Act (advice and assistance) to provide a breakdown of the estimated costs to assist the complainant in potentially making a new, refined, request that would fall below the appropriate limit. The Commissioner

notes however, that the public authority did not aggregate and refuse both requests under section 12, but instead chose to answer request two, and refuse request one.

16. The Commissioner also accepts, hypothetically, that in a situation where the costs of complying with one request have already been incurred at the point at which a subsequent sufficiently similar request is received, then the Regulations allow for the costs already incurred in complying with an earlier request to be taken into account in refusing a subsequent request under section 12(1).
17. However, in this case the two requests were received on the same day and thus no costs had already been incurred at the point at which the public authority proposed to estimate the costs of complying with request one. The Commissioner therefore considers that in choosing to answer request two the public authority effectively precluded itself from relying upon an aggregation of costs for these two requests. He therefore concludes that the costs already incurred in complying with request two, cannot be taken into account in the public authority's refusal of request one. The Commissioner considers that if he allowed the aggregation of these costs he would effectively be allowing the public authority to choose which information to provide within the costs ceiling, rather than leaving this choice to the applicant. He considers that this would undermine the purpose of the provisions of paragraph 14 of the section 45 code of practice (see legal annex for wording) in relation to advice and assistance and fees. The Commissioner has therefore only gone on to consider the costs directly related to complying with request one.
18. In this case Northampton General Hospital NHS Trust informed the Commissioner in its letter of 15 April 2009 that, in order to collate the information requested, it would have to manually check in excess of 4000 files. It estimated that such work would take in excess of 6 days. Which would consist of contacting every head of department to establish whether they were holding records that would be required under the terms of the request to:
  - Search for information meeting the requirements of the request by checking in excess of 4000 manual staff records prior to computerisation in September 2008.
  - Supply copies of information requested as appropriate
  - For the FOI staff to review the information provided and make any exemptions/redactions with regard to personal information as appropriate.

The first bullet point listed above, searching for the information, is the only activity relevant for regulation 4(3) purposes.

19. In response to the Commissioner's further queries, Northampton General Hospital NHS provided an explanation of the job evaluation process. It explained that the purpose of all posts being evaluated was to bring all job descriptions and pay scales in line with the new NHS pay system, introduced in 2004, based on the principle of equal pay for work of equal value. This process was called Agenda for Change. The initial assimilation stage of the Agenda for Change process involved a detailed assessment of each post to determine the correct pay band for each post. The Trust stated that in this assimilation stage every individual job description went through an

evaluation, but explained that not everyone with the same job title would necessarily have had the same job description. This meant that where there were two people with the same job title but with a difference in their job descriptions, each post would have been evaluated separately. However, where a group of people had exactly the same job description only one evaluation would have been carried out and applied to those within that group. The Trust also explained that after completion of the initial assimilation stage there remained a process for evaluating new posts, posts which become subject to significant job description changes, and individual appeals against scores awarded in the assimilation stage, which is still ongoing.

20. The Trust confirmed that there was a software package called CAJE (computer aided job evaluation) used for recording scores of all posts that went through the main assimilation phase during 2004/2005. It stated that this is not a database, and that scores can be overwritten following an appeal, meaning that there is no way of differentiating between original assimilation period scores and scores revised after appeal. The effect of this is that there is no way of using this system to identify just those evaluation scores which took place, via individual appeal, after 01 October 2007 (the start of the time period specified in the request). The Trust also stated that this system does not differentiate between individual job evaluations and group job evaluations. The Commissioner has viewed a sample of the information held on CAJE and is satisfied that the information relevant to this request cannot be easily retrieved from the format in which it is currently held.
21. The Trust also confirmed that there is no other central database or central record for any jobs evaluated, appealed or new posts created between the end of the main period of assimilation in 2005 and September 2008. Therefore, there is no central record which covers the time period of this request and in order to make sure that they caught all of the information requested by the complainant they would have had to manually check every staff file to ensure that all job evaluations, appeals and new posts relevant to this request were found rather than to just provide an evaluation sheet per job title, which may have resulted in an inaccurate response being sent to the complainant.
22. The public authority advised the Commissioner that when initially responding to this request and during the course of this investigation they had written to the previous post holder who had responsibility for implementing the Agenda for Change process, as well as writing to the previous Director of Human Resources in an attempt to locate any records that may have been made during the job evaluation process relevant to the timescale of this request. Unfortunately no responses were received to these letters and therefore very few records could be located. In response to the Commissioner's investigation the Trust undertook significant searches to locate the requested information. In responding to the Commissioner's investigation, the Trust stated it had found some information relevant to the request but it had taken them 5 working days to do so which was proof in itself that the Trust would not have been able to respond to this request within the fees limit.
23. In the present case the Commissioner considers that the process of manually checking in excess of 4000 files represents time spent on locating and retrieving the requested information, and so can be considered when estimating the total time that would be spent for the purposes of the section 12 cost ceiling.

24. The Commissioner notes the Regulations in that the cost limit equates to 2½ days work for a public authority at £25 per hour. On the basis of this information the Commissioner accepts that it was reasonable for Northampton General Hospital NHS Trust to reach its conclusion that retrieving and locating the information would take over 2½ days (18 hours) of staff time. In order to check in excess of 4000 files, within 18 hours, the public authority would have had to check in excess of 3.7 files per minute.
25. Having considered the above information, the Commissioner is satisfied that the cost of locating, retrieving and extracting the requested information would exceed the appropriate limit, and that section 12(1) is engaged.

### **Section 16 'Duty to provide advice and assistance'**

26. Section 16(1) provides that:

"It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it".

Section 16(2) provides that:

"Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case".

27. Where a public authority refuses a request because the appropriate limit has been exceeded, paragraph 14 of the section 45 Code of Practice on the discharge of public authorities' functions under Part I of the Freedom of Information Act 2000" recommends that the public authority should consider providing an indication of what, if any, information could be provided within the appropriate limit, and also consider advising the applicant that a narrowed or refocused version of the request could be handled within the limit.
28. The Commissioner looked at whether the public authority would be able to offer advice and assistance to the complainant in order to help reduce the scope of the request. The public authority responded as follows:

*"...on this occasion to offer the requester the option of refining or resubmitting their request in part to bring it below the appropriate limit would not reduce the magnitude of the request in terms of needing to contact all departments / searching records Directorate by Directorate for information required"*

Upon further questioning from the Commissioner the Trust acknowledged that they could have offered the complainant the option of refining her request to specific departments, or the option of receiving job evaluations records which have been recorded since September 2008, albeit that some of these might fall outside the specified period. It acknowledged that both options if accepted by the complainant could potentially have been fulfilled within the fees limit. The option of identifying new posts created since 01 October 2007 from recruitment records and considering



whether these could be provided within the costs limit could also have been considered. The Commissioner therefore considers that the Trust breached the requirements of section 16(1).

## **The Decision**

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29. The Commissioner's decision is that the public authority dealt with the request for information in accordance with the Act, and that it was justified in withholding the information by reference to section 12 (1) of the Act. However, the Commissioner finds the public authority in breach of section 16 by failing to offer sufficient advice and assistance.

## **Steps Required**

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30. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- i) Provide the complainant with advice and assistance to assist the complainant in potentially submitting a new request that would fall within the costs limit, in compliance with the provisions of the section 45 Code of Practice and the requirements of section 16(1).
31. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

## **Other Matters**

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32. The Commissioner notes that as a result of this request the Trust have begun the process of logging the job evaluations carried out before September 2008 on their central database.

## **Failure to comply**

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33. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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34. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).  
Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

**Dated the 17<sup>th</sup> day of August 2009**

**Signed .....**

**Lisa Adshead  
Senior FOI Policy Manager**

**Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**



## Legal annex

### **Exemption where cost of compliance exceeds appropriate limit**

**Section 12(1)** provides that –

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

### **The Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (No. 3244)**

#### **The appropriate limit**

**Regulation 3** provides that –

“(1) This regulation has effect to prescribe the appropriate limit referred to in ... section 12(1) and (2) of the 2000 Act.

(2) In the case of a public authority which is listed in Part I of Schedule 1 to the 2000 Act, the appropriate limit is £600.”

#### **Estimating the cost of complying with a request – general**

**Regulation 4** provides that –

“(1) This regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request would exceed the appropriate limit.

(2) A relevant request is any request to the extent that it is a request–

(a) for unstructured personal data within the meaning of section 9A(1) of the 1998 Act<sup>[3]</sup>, and to which section 7(1) of that Act would, apart from the appropriate limit, to any extent apply, or...

(b) information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply.

(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in–

(a) determining whether it holds the information,  
(b) locating the information, or a document which may contain the information,  
(c) retrieving the information, or a document which may contain the information, and

- (d) extracting the information from a document containing it.
- (4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.”

## **Estimating the cost of complying with a request - aggregation of related requests**

### **Regulation 5 provides that -**

“(1) In circumstances in which this regulation applies, where two or more requests for information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply, are made to a public authority -

- (a) by one person, or
- (b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the total costs which may be taken into account by the authority, under regulation 4, of complying with all of them.

(2) This regulation applies in circumstances in which-

- (a) the two or more requests referred to in paragraph (1) relate, to any extent, to the same or similar information, and
- (b) those requests are received by the public authority within any period of sixty consecutive working days.

(3) In this regulation, "working day" means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971<sup>[4]</sup> in any part of the United Kingdom.”

## **Section 16 - Duty to provide advice and assistance**

- (1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.
- (2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

## **Section 45 Code of Practice - Duty to provide advice and assistance**

13. Where the applicant indicates that he or she is not prepared to pay the fee notified in any fees notice given to the applicant, the authority should consider whether there is any information that may be of interest to the applicant that is available free of charge.
  
14. Where an authority is not obliged to comply with a request for information because, under section 12(1) and regulations made under section 12, the cost of complying would exceed the "appropriate limit" (i.e. cost threshold) the authority should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focussing their request, information may be able to be supplied for a lower, or no, fee.